

Before The  
Federal Communications Commission  
Washington, D.C. 20554

In the matter of:	)	
	)	
	)	
Amendment of Part 2 of the Commission's	)	
Rules to Allocate Spectrum Below 3GHz	)	ET Docket No. 00-258
for Mobile and Fixed Services to Support the	)	
Introduction of New Advanced Wireless	)	
Services, including Third Generation Wireless Systems	)	
	)	
Mass Media Bureau Multipoint Distribution Service	)	Report No. 164
and Instructional Television Fixed Service	)	
Applications Accepted for Filing	)	
	)	
Mass Media Bureau Provides Further Information	)	DA 01-751
Regarding Grants of ITFS and MDS Two-Way	)	
Applications	)	

**OPPOSITION TO EMERGENCY PETITION**

Network for Instructional TV, Inc. ("NITV"), the licensee of twenty-three (23) Instructional Television Fixed Service ("ITFS") stations in communities throughout the United States, an applicant for modified and booster facilities for which automatic grant is anticipated during the week of April 9, 2001 and a participant in proposed two-way educational broadband systems,<sup>1</sup> hereby opposes the "Emergency Petition to Defer Action on Applications" (the "Petition" and "Verizon Petition") filed by Verizon Wireless ("Verizon") on March 28, 2001.

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<sup>1</sup> See File Nos.: BPIFB -20000818BAY, BPIFB -20000818BVM, BPIFB -20000818BWR, and BPIFB -20000818BXI, filed by NITV's local affiliate Atlanta Educational Services, Inc. ("AES"), and BPIF-20000818CYC. NITV holds the following ITFS licenses: WLX-951, Anderson, IN; WLX-787, Baltimore, MD; WND-252, Bloomington, IN; WLX-278, Champaign, IL; WHR-883, Ft. Worth, TX; WFD-456, Indianapolis, IN; WHR-523, Kansas City, MO; WHR-514, Milwaukee, WI; WHR-513, New Orleans, LA; WHR-520, New York, NY; WLX-490, Nolanville, TX; WHR-525, Pittsburgh, PA; WHR-515, Portland, OR; WLX-291 and WLX-292, Saginaw, MI; WLX-874, San Antonio, TX; WLX-759, St. Louis, MO; WHR-518, Tampa, FL; WLX-486, West-Waco, TX; and WHR-461, Washington, D.C. Additionally, NITV's local affiliates hold WHR-790, Miami, FL (Southern Florida Instructional TV, Inc.), WNC-804 (AES) and WHR-525 (Delaware Valley Educational Television Network, Inc.).

Verizon's shrill, eleventh-hour claim that the ITFS/MDS spectrum must be frozen in time pending the outcome of the 3G proceeding shamelessly ignores longstanding FCC rules and policies and the need of American students and teachers for prompt access to broadband educational services. This baseless and untimely Petition must be immediately dismissed and the applications it references granted on schedule.

The Commission need only refer to statements made *last week* by FCC Chairman Powell and Commissioner Furchtgott-Roth in promptly rejecting Verizon's petition. In his opening statement before the Subcommittee on Telecommunications and the Internet of the House Committee on Energy and Commerce, Chairman Powell reaffirmed the Commission's desire to promote prompt broadband deployment, stating:

We will do everything we can to facilitate the timely and efficient deployment of broadband infrastructure. In doing so, we will endeavor to promote the growth of a wide variety of technologies that can compete with each other for the delivery of content and will strive not to favor – or uniquely burden – any particular one.<sup>2</sup>

In commenting on the FCC's Final Report, Commissioner Furchtgott-Roth noted the delay that will be experienced by fixed wireless broadband services should the Commission disturb the approved two-way licensing process for ITFS and MDS. He said:

MDS and ITFS licensees have waited for years to have the flexibility and leasing rights that have now permitted their symbiotic relationship to flourish. Tampering with this relationship (which the FCC itself created and encouraged) undermines certainty and will retard the development of the services we have spent years incubating.<sup>3</sup>

As indicated by these statements, the Commission should promptly reject Verizon's petition solely because of the need to encourage broadband competition and expansion of wireless broadband services, including educational services, to unserved areas. However, the

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<sup>2</sup> Summary of Opening Statement of FCC Chairman Michael K. Powell Before the Subcommittee on Telecommunications and the Internet of the White House Committee on Energy and Commerce, March 29, 2001.

<sup>3</sup> Press Statement of Commissioner Harold Furchtgott-Roth Re: Spectrum Study of the 2500-2690 MHz Band, Final Staff Report (March 30, 2001) at 1.

numerous mischaracterizations set forth in the Petition and its directly anticompetitive nature demand further response.

Verizon's suggestion that granting the two-way applications could somehow derail the 3G proceeding is preposterous. Data submitted in this proceeding has convincingly illustrated that sharing the 2150-2165 MHz and 2500-2690 MHz bands between 3G services and ITFS/MDS operations is impossible and segmentation or relocation of the licensees on these bands economically infeasible.<sup>4</sup> Despite this evidence, much of which the FCC recently confirmed in its Final Report analyzing the 2500-2690 MHz band,<sup>5</sup> Verizon asks the Commission to take the drastic and indefensible step of freezing valid applications filed by existing licensees proposing to use their existing frequencies for advanced services. These applicants will be affected by allocation decisions made in the 3G proceeding regardless of the status of their two-way applications. Indeed, any attempt to predict the final decision in the 3G proceeding is sheer speculation. The approved transition to two-way services, long planned by ITFS and MDS licensees and their commercial fixed wireless operators, should not be delayed because there is a chance the operations may have to be modified in the future.

Contrary to Verizon's claims, grant of the two-way applications should assist the Commission's decision making. For example, the fixed wireless broadband deployment will provide an additional basis for evaluating relevant public interest factors such as the developing

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<sup>4</sup> FCC Staff Report Issued by the Office of Engineering and Technology, Mass Media Bureau, Wireless Telecommunications Bureau, and International Bureau, "Spectrum Study of the 2500 – 2690 MHz Band: The Potential for Accommodating Third Generation Mobile Systems" (*FCC Staff Report*), Interim Report, released November 15, 2000, at 42; George W. Harter, MSI, "Feasibility Study on Spectrum Sharing between Fixed Terrestrial Wireless Services and proposed Third Generation Mobile Services in the 2500-2690 MHz Bands," October, 2000 (Appendix 5.2 to Interim Report) at A-74; George W. Harter, MSI, "Interference to 3G Systems from ITFS/MDS Systems Sharing the Same Frequencies," attached as Appendix A to Comments of The Wireless Communications Association International, Inc. ("WCAI Comments"), ET Docket No. 00-258, February 22, 2001, at 3; "MDS/MMDS/ITFS Two-Way Fixed Wireless Broadband Service; Spectrum Requirements and Business Case Analysis," HAI Consulting, Inc., attached as Appendix B to WCAI Comments, at 28.

<sup>5</sup> *FCC Staff Report*, Final Report, ET Docket No. 00-232, DA 00-2583, released March 30, 2001, at 36, 92-93.

role of educational broadband services to schools and homes, and consumer demand for fixed broadband services.<sup>6</sup>

As Verizon well knows, the streamlined processing procedure it attacks is an essential aspect of the rules developed through the two-way proceeding. Verizon – hardly an unsophisticated party – need only have turned to the first rule section listed in both the Public Notices it challenges to recognize that its complaint that the applications are being granted “after what can only have been a cursory review” is totally misplaced.<sup>7</sup> Pursuant to Sections 74.911(d) (ITFS) and 21.27(d) (MDS) of the Commission’s rules, on the sixty-first day following the February 1 Public Notice containing each application filed during the initial filing window, the applications *shall* be granted, barring a formal petition to deny filed against a specific application by a party-in-interest or notification by FCC staff that a particular application will not be granted.<sup>8</sup> This procedure is indeed automatic, not “potentially automatic” as Verizon claims. It clearly contemplates that review and negotiations by applicants themselves, not FCC staff, will be the primary means of policing the applications to ensure compliance with the Commission’s interference protection and other requirements.<sup>9</sup> Verizon has provided no reason for disruption of this process, which was developed by the FCC through its standard notice-and-comment rulemaking proceeding.<sup>10</sup>

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<sup>6</sup> See Verizon Petition at 8.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> 47 C.F.R. Section 74.911 (d); 47 C.F.R. Section 21.27 (d); *see also* 47 C.F.R. Section 74.939; 47 C.F.R. Section 21.909.

<sup>9</sup> *Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions* (Reconsideration Order), 14 FCC Rcd 12764 (1999) at Paragraphs 8-14.

<sup>10</sup> Given the FCC’s longstanding two-way rules and numerous public notices leading up to grant of the two-way applications, it need hardly be noted that there is no “emergency.” Verizon has long had notice of imminent grant of these applications. Obviously, filing of the Petition was delayed in order to maximize the potential for disrupting the FCC’s processes.

Verizon misleadingly cites instances in which the FCC has halted filing of new applications because of a pending allocation proceeding.<sup>11</sup> Unlike the situations discussed by Verizon, the ITFS and MDS two-way applicants are existing licensees seeking to modify operations on existing licensed frequencies. Grant of the applications challenged by Verizon will not change the ITFS and MDS applicants' rights as licensees under the Commission's rules. There is simply no basis for Verizon's suggestion that a grant of these applications will adversely affect the Commission's decisions in the 3G proceeding.

The only possible explanation for Verizon's ill-founded petition is that it fears prompt deployment of fixed wireless broadband services. The services Verizon seeks to delay will provide direct competition to Verizon's own DSL services and extend broadband services to geographic areas in which Verizon has failed to invest. The Petition brings into sharp relief the nexus between Verizon's DSL business and its uniquely extreme position in the 3G proceeding. While Verizon demands access to the entire 2500-2690 MHz band, the consensus is that a lower band is far more desirable for potential 3G services. Verizon's anticompetitive antics should not be allowed to distract the Commission from the important work of balancing existing spectrum allocations needed by American consumers, students and educators, fixed broadband wireless providers and the U.S. military, with Verizon's claimed but unsupported need for additional spectrum for mobile Internet services.

Verizon's outrageous petition demonstrates blatant disregard for the needs of American education and FCC rules and policies facilitating students' and educators' access to wireless broadband services. Grant of the two-way applications will not adversely impact the Commission's decision making in the 3G proceeding, will support the Commission's own efforts to encourage broadband deployment and complies with the carefully-crafted rules and policies

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<sup>11</sup> Verizon Petition at 7.

established in the two-way proceeding. Accordingly, Verizon's petition should be promptly dismissed and the two-way applications granted as set forth in the Commission's rules.

Respectfully submitted,

**NETWORK FOR INSTRUCTIONAL TV, INC.**

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April 3, 2001

### Certificate of Service

I, Yvette Graves, a Legal Secretary with the law firm of Rini, Coran, Lancellotta, P.C. hereby certify that on this 3rd day of April, 2001, copies of the foregoing Opposition to Emergency Petition in ET Docket No. 00-258 were sent by first class U.S. mail, postage prepaid, to the following parties:

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